TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902.~~ ~~1903.~~ 1904.

No. ~~703.~~ ~~284.~~ 34.

THE UNITED STATES, APPELLANT,

vs.

F. G. EVANS, CLAIMANT OF THE BRITISH STEAMSHIP "BLACKHEATH."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED MAY 14, 1903.

(18931.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 703.

THE UNITED STATES, APPELLANT,

vs.

F. G. EVANS, CLAIMANT OF THE BRITISH STEAMSHIP "BLACKHEATH."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

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26226—03

1 *Caption.*

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

THE UNITED STATES OF AMERICA, LIBELANT,
versus
THE BRITISH STEAMSHIP "BLACKHEATH," F. G. Evans, master & claimant.
} Number 1012. In Admiralty.

F. G. Evans, claimant and principal, on the claim bond given for the release of said steamship, and Robert Hunter and George E. Sage, sureties thereon.

Libel in rem for damages for the destruction of a beacon or channel light in the Mobile ship channel caused from a collision by said steamship.

Transcript of the record and proceedings in said cause, in which the question of jurisdiction alone is the issue.

Process.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded that you attach, seize, take, and safely keep the British steamship "Blackheath," her tackle, apparel, and furniture, whereof F. G. Evans is master, now lying at the port of Mobile, so that you have said steamship "Blackheath," her tackle, apparel, and furniture, subject to the order and decree of the district court of the United States for the southern district of Alabama, at Mobile, on the first Monday of March, A. D. 1903, to answer the libel of the United States of America in the sum of $1,100.00 for damages to beacon buoy Number 7 in the Mobile ship channel by reason of a collision
2 therewith on the 24th day of January, A. D. 1903. Herein fail not, and have you then and there this writ.

Witness the honorable Harry T. Toulmin, judge of the district court of the United States for the southern district of Alabama, and seal of said court, this the 29th day of January, A. D. 1903.

Attest: RICHARD JONES, *Clerk.*

(Seal U. S. Dist. Court, Sou. Dist. Alabama.)

Service of this writ of seizure is hereby accepted and seizure of vessel waived, this 30th day of January, A. D. 1903. F. G. Evans, master of steamship "Blackheath."

Filed January 30th, A. D. 1903.

RICHARD JONES, *Clerk.*

Claim bond.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

Know all men by these presents, that we, F. G. Evans, claimant of the steamship "Blackheath," principal, and Robert Hunter and George E. Sage, sureties, are held and firmly bound unto the United States of America in the sum of two thousand two hundred dollars ($2,200.00), lawful money of the United States of America, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, one and each of our executors, administrators, or heirs, firmly by these presents. Sealed with our seals and dated this the 30th day of January, A. D. 1903.

Whereas a libel has been filed in the district court of the United States for the southern district of Alabama, on the 29th day of January, A. D. 1903, by the said United States of America against the British steamship "Blackheath" for damages by collision of said steamship with beacon bouy Nnmber 7, in the Mobile ship channel, civil and maritime, for eleven hundred dollars, therein alleged to be due and owing to the said libelants.

The condition of this obligation is such that if the above bounden F. G. Evans, claimant, principal, and Robert Hunter and George E. Sage, sureties, shall abide and answer the decree of the court, or upon appeal of the appellate court, then this obligation to be void; otherwise to remain in full force and virtue.

F. G. EVANS. [SEAL.]
ROBERT HUNTER. [SEAL.]
GEORGE E. SAGE. [SEAL.]

3 Acknowledged, signed, sealed, and delivered in the presence of and before me, this the 30th day of January, A. D. 1903.

RICHARD JONES, Jr., *Deputy Clerk.*

Approved January 30th, A. D. 1903.

HARRY T. TOULMIN, *Judge.*

Filed January 30th, A. D. 1903.

RICHARD JONES, *Clerk.*

Claim.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

THE UNITED STATES OF AMERICA
versus
STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty.

Comes F. G. Evans, master of said steamship "Blackheath," and for the Britain Steamship Company, Limited, of London, England, owners thereof, intervenes in said cause and claims the possession of said steam-

ship, and says that the said Britain Steamship Company, Limited, in whose behalf this claim is made, are the true and bona fide owners of said steamship and that no other persons are the owners thereof. And claimant further says that he is duly authorized to make this claim for and in behalf of said owners.

F. G. EVANS.

Subscribed and sworn to before me this 30th day of January, A. D. 1903.

RICHARD JONES, Jr.,
Deputy Clerk U. S. Dist. Court.

Filed this January 30th, A. D. 1903.

RICH'D JONES, *Clerk.*

Libel.

To the honorable HARRY T. TOULMIN, *judge of the district court of the United States for the southern district of Alabama:*

The libel of the United States of America against the British steamship "Blackheath," F. G. Evans, master, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest in the same in a cause of collision civil and maritime, alleges as follows:

1st. That your libelants, before and at the time of the collision herein mentioned, were the owners and proprietors of a certain beacon number 7, Mobile ship-channel lights, Alabama, which said beacon constituted a part of the system of channel lights from the port of Mobile to the lower bay or anchorage near Fort Morgan, Alabama.

2nd. That on Saturday the 24th day of January, A. D. 1903,
4 the said British steamship "Blackheath" was approaching the port of Mobile from the sea, having on board one George Godbold as pilot. That said beacon number 7, Mobile ship-channel lights, was then safely and securely constructed upon piles driven from 10 to 12 feet in the bottom of the bay on the south side of the channel, about 30 feet distant from said south side of the channel and not more than two miles south of the port of Mobile.

3. That said steamship "Blackheath" was steaming up the said channel to the port of Mobile about 9 o'clock a. m. of said January 24th. The weather was fair. Said beacon number 7 and the channel were in full view of the master, pilot, and other officers of said steamship.

4th. That said beacon number 7, Mobile ship channel lights, the piling upon which it was constructed, and the lens lantern suspended therefrom, were completely demolished by the force and violence by which they were struck by the said steamship "Blackheath." In consequence of said collision of the said steamship "Blackheath" with said beacon number 7, libelants will be compelled to restore the same entirely, and libelants have sustained in consequence of said collision a loss to the amount of eleven hundred dollars ($1,100.00), which said loss and damage were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said steamship "Blackheath," and not by or through any fault, negligence, or improper conduct of these libelants.

5th. That since the said beacon number 7 was destroyed by said

steamship as aforesaid, libelants, through the office of Lieutenant-Colonel A. N. Damrell, United States Engineers, and engineer of the 7th and 8th light-house districts, have applied to the firm of Hunter, Benn & Company, of Mobile, Alabama, the consignees of said steamship "Blackheath," and requested them to settle or give security to these libelants for the damages sustained by them as above mentioned. Libelants are informed and believe that the owners of the said steamship "Blackheath" reside abroad, but the said consignees do not admit any liability on the part of said steamship for the damages or any part thereof.

6th. That said steamship "Blackheath" is now lying in the port of Mobile and within the jurisdiction of this court.

7th. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore libelants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "Blackheath," her tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid, and that this honorable court may be pleased to decree the payment of the damages as aforesaid, and that said vessel may be condemned and sold to pay the same, and that libelants may have such other and further relief as in law and justice they may be entitled to receive.

M. D. WICKERSHAM,
U. S. Attorney for the Southern District of Alabama,
Proctor for Libelants.

(Endorsed:) No. 1012. U. S. district court sou. dist. Alabama. The United States versus British Steamship "Blackheath." Libel for damages $1,100.00 by collision to Beacon No. 7. Filed this January 29th, A. D. 1903. Richard Jones, clerk.

Answer by claimant.

District court of the United States for the southern district of Alabama.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty.

The answer of F. G. Evans, master and claimant of steamship "Blackheath," in behalf of the owners thereof to the libel of the United States against said vessel.

And for such answer said master doth allege as follows:

First. That he admits the allegations of the first paragraph of the libel.

Second. That on Friday, the 23rd day of January, 1903, said steamer approached the outer bar of Mobile Bay, being bound for the city of Mobile, under consignment to Hunter, Benn & Company.

At about 4.30 p. m. o'clock she took on board a pilot, one George Godbold, near the whistling buoy outside the outer bar; said pilot was

so taken from a pilot boat which there approached and tendered him to said ship as a pilot to navigate it to the city of Mobile.

Said Godbold was then a duly licensed and commissioned pilot for the navigation of vesels over said outer bar and up to the ship channel from Fort Morgan to Mobile. He took full control of the navigation of the ship immediately upon boarding her, and retained such control until the occurrence of the collision complained of. He at once took the ship over the outer bar and carried her up the channel to near the
6 lowest beacon light two or three miles north of Fort Morgan, where she arrived about 5.30 Friday afternoon.

He caused her to be anchored there, declaring it to be unsafe to attempt to proceed up the channel that night.

Third. On Saturday morning, the 24th of January, said pilot caused said vessel to be gotten underway and proceeded to take her up the ship channel of Mobile Bay on her way to the city of Mobile.

Said channel was constructed and is sustained by libelant, and is open to ships such as the "Blackheath," and its use by them invited by libelant. It is a very narrow channel, giving very little room for navigation or for maneuvering a vessel in case of any sudden emergency.

The vessel was in ballast, drawing about nine feet forward and about twelve feet aft, and proceeded up the channel under her own steam and at about half speed; she was entirely under control and obedient to her helm until just at the time of the collision.

Fourth. At a distance of a half a mile or more beacon 7 and a large Italian brig lying just above it were plainly visible to those on the "Blackheath." The brig was about 300 feet above the beacon, and was then stationary and was in fact aground in the channel near its western side. There was no reason to believe that there would be any difficulty in the "Blackheath's" passing the brig, and it was not imprudent to attempt to do so; she was therefore kept on her way. The channel at that point gradually curves to the northeast, and there was then a strong ebb tide running. Just after the bow of the ship had gotten above the beacon a strong current struck it on the starboard side and caused it to sheer towards the south bank of the channel. This current was partly made and directed by an eddy that had been created by the brig's situation, which tended to run the tide strongly over to the southward and westward. It was unusual and was unknown to and unexpected by the pilot or by the master or anyone else in charge of the vessel. The vessel being in imminent danger of grounding, immediately upon her beginning to sheer the pilot ordered the wheel hard a-port and the engines full speed ahead, which orders were promptly obeyed. The current was running so strongly against the starboard bow that the ship could not obey the helm instantly and continued to sheer towards the south, getting between the beacon and the brig. In another moment she must have yielded to the helm, but by that time she had gotten into such a position that upon doing so she would inevitably have cut through the brig. The emergency was very critical, and the pilot thereupon ordered full speed astern and the anchor let go, both of which orders were executed as soon as given. Upon that being done the ship swung towards the beacon and crashed into it before
7 anything could be done to check her.

Fifth. This respondent had no knowledge of the channel, its current or conditions, and put his vessel entirely under the control of the

pilot, who navigated it without interference on his part all the way up the channel and until the accident occurred, though respondent stood by him and looked out for some time before the danger commenced, and until after the beacon was struck.

In his judgment the orders given by the pilot after the ship began to sheer southward were prudent and the best course to be pursued under the circumstances.

If steam had not been put on and the helm had not been put hard aport, the current would have swept the ship down on the beacon. If that had been continued, the brig would have been run down. After the current struck the starboard bow and caused the southward sheer of the vessel, it was not possible to avoid injury either to the brig or else to the beacon, and to have cut down the brig would have been much the greater calamity.

Respondent has been informed by said pilot and believes and therefore states, that it was not imprudent for the "Blackheath" to attempt to pass the brig as she did, and that she got into her dangerous situation without fault on her part.

He submits to the court that the injury to the beacon was the result of unfor'seen conditions and not to be expected, and was an inevitable accident without fault on the part of the ship.

Sixth. Respondent does not know and can not answer as to the extent or pecuniary amount of damage to the beacon by the collision. So far as he could see, it was driven under water, and there was nothing he could do in the way of saving any part of it or of reducing the pecuniary damage sustained.

Seventh. Respondent admits that Hunter, Benn & Company, of Mobile, were the consignees of the ship, and that demand was made upon them to settle or give security for the payment of the damages done the beacon as stated in the fifth paragraph of the libel. He says that said consignees, in response to said demand, offered to give security for the payment of any damages which might be adjudged libelant by any court taking jurisdiction of the enforcement of its claim.

And respondent says that all and singular the premises are true. Wherefore he prays that this honorable court will pronounce against libelants with costs.

F. G. EVANS, *Master, etc.*

R. H. CLARKE, *Proctor.*

8 Subscribed and sworn to before me by said F. G. Evans this 31st day of January, A. D. 1903.

RICHARD JONES, JR.,
Deputy Clerk, U. S. District Court, Sou. Dist. Alabama.

Filed this 31st day of January, A. D. 1903.

RICHARD JONES, *Clerk.*

Opinion.

APRIL 3RD, 1903.

THE UNITED STATES OF AMERICA vs. BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty. Libel in rem.

M. D. Wickersham, esqr., U. S. attorney.
R. H. Clarke, esqr., for claimant.
TOULMIN, Judge.

This is a libel in rem to recover damages for the destruction of a structure and beacon or channel light constructed thereon in the river or bay of Mobile caused from a collision by said steamship.

A witness for the libelants was introduced who testified as to the character and construction of the structure on which the beacon light was placed, and where it was situated in the waters of the river or bay of Mobile. Whereupon the claimant moved the court to dismiss the libel on the ground that the court had no jurisdiction of the subject matter of the suit.

In matters of tort the jurisdiction in admiralty depends upon the locality of the thing injured. The locus of the damage and not the locus of the origin of the tort is the real test of admiralty jurisdiction. Hermann vs. Port Blakely Mill Co., 69 Fed., 646; The Mary Garrett, 63 Fed., 1009, and authorities therein cited.

In the case of the Professor Morse, 23 Fed., 803, it was held that an injury to a marine railway was not a maritime tort, although it extended out into the river for a long distance under the water, with one end resting on or near the bottom of the river, because the marine railway was not a floating structure.

In the case of The City of Milwaukee vs. The Curtis et al., 37 Fed., 705, the court, speaking in reference to a swing-bridge resting on a pier constructed on the bed of the river, and which was damaged by the negligent conduct of vessels navigating the river, said, "The cause of the injury was a movable thing navigating the waters; but the consum'ation of the wrong was upon an immovable structure above the waters, attached to the land and not afloat. The absence of admiralty jurisdiction over injuries to such structures is sustained by an overwhelming weight of authority," and in the case of The Mary Webster, No. 9302, Fed. cases,

Judge Blatchford held, that a derrick resting on the soil of the
9 bottom of a river, and in the midst of the water, which was injured by a vessel colliding with it, was not a case of admiralty jurisdiction.

There are many other decisions to the same effect. The law is well settled that no action can be maintained in admiralty for injuries done to a permanent structure resting upon land in a navigable stream, though the structure is lawfully there. Spencer on Marine Collisions, section 11.

The question in this case is, Where was the injury sustained—on land or on water?

The proof is that the structure injured in this case was a permanent one. It was not floating or susceptible of being floated. It was located 15 or 20 feet distant from the channel of the river or bay about two miles south of the city of Mobile in the midst of water 12 or 15 feet deep. It

was constructed of piles driven into the soil at the bottom of the water to a depth of 12 or 13 feet, which piles were braced with iron bars above the top of the water. The piles extended some distance above the water, on the top of which a platform of two by twelve inch planks was fastened. On this platform an iron framework was erected to the heighth of 15 or 20 feet, to which a beacon light was suspended. The structure was an immovable one—that is, not a floating structure or one susceptible of being floated. It was not on the water, but was below the surface of the water, resting well down in the soil at the bottom of the river and extending far above the top of the water.

I think that in legal contemplation it was land.

It seems to me clear, under the decisions, that the injury sued for is not a subject of admiralty jurisdiction.

Being then of the opinion that this suit is not within the jurisdiction of a court of admiralty, the libel must be dismissed. It is so ordered.

Filed this April 3rd, A. D. 1903.

RICHARD JONES, *Clerk.*

Decree dismissing cause and certificate that question of jurisdiction alone was the issue in cause.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty.

This cause coming on to be heard on the pleadings and evidence as to the construction and character of the structure, the injury to which is sued for, whereupon the claimant moved the court to dismiss the suit on the ground that the court has no jurisdiction of the subject matter thereof, and being submitted thereon and duly considered by the court, the court is of opinion that the injury sued for is not a subject of admiralty jurisdiction and that the suit is not within the jurisdiction of a court of admiralty, it is therefore ordered, adjudged, and decreed by the court that said motion to dismiss be, and the same is hereby, granted, and the cause is dismissed.

And the court doth now hereby certify that the question of jurisdiction alone was the issue in the cause on the evidence submitted.

Made this April 3rd, A. D. 1903.

HARRY T. TOULMIN, *Judge.*

Filed April 3rd, A. D. 1903, and entered on the minutes of the court, page 706.

RICH'D JONES, *Clerk.*

Assignment of errors.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In admiralty.

Libelants in this action, in connection with their petition for appeal, make the following assignment of errors which they aver occurred in dis-

posing of the motion made by claimant to dismiss their libel for want of jurisdiction, to wit:

The court erred in sustaining the motion of the claimant to dismiss the libel on the ground that the court had not jurisdiction of the cause, because the effect of granting said motion in that behalf was to deny the jurisdiction of the court.

The court erred in dismissing the libel.

M. D. WICKERSHAM,
U. S. Attorney, Southern District of Alabama,
Proctor for Libelants.

Filed in open court April 3rd, A. D. 1903.

RICHARD JONES, *Clerk.*

Petition for appeal.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In admiralty.

Now come the United States of America, libelants herein, and say that on the 3rd day of April, 1903, this court entered judgment herein in favor of the claimant against these libelants, in which judgment or decree certain errors were committed to the prejudice of these libelants, all
11 of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these libelants pray that an appeal may be allowed in this behalf to the United States Supreme Court for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said United States Supreme Court.

M. D. WICKERSHAM,
U. S. Attorney for Southern District of Alabama,
Proctor for Libelants.

Filed in open court this April 3rd, A. D. 1903.

RICHARD JONES, *Clerk.*

Order allowing appeal.

FRIDAY MORNING, *April the 3rd, A. D. 1903.*

Present the honorable Harry T. Toulmin, judge presiding. November term, A. D. 1903. Minutes, page 706.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In admiralty.

The libelant having filed assignment of errors and a petition praying an appeal to the Supreme Court of the United States from the decree rendered herein on this day dismissing the cause, it is ordered by the court that said appeal be and is hereby allowed as prayed.

Citation.

UNITED STATES OF AMERICA, ss.

The President of the United States of America to F. G. Evans, claimant of the British steamship "Blackheath," greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the city of Washington, D. C., within thirty (30) days from the date hereof, pursuant to an appeal allowed by the district court of the United States for the southern district of Alabama, in admiralty cause number 1012, wherein the United States of America is appellant and you, the said F. G. Evans, claimant of the steamship "Blackheath" are appellee, to show cause, if any there be, why the decree mentioned in said appeal should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, honorable Harry T. Toulmin, judge of the district court of the United States for the southern district of Alabama, this the
12 29th day of April, A. D. 1903.

HARRY T. TOULMIN, *Judge.*

Attest:
[Seal U. S. district court sou. dist. Alabama.]

RICHARD JONES,
Clerk U. S. District Court for the Southern District of Alabama.

I hereby accept service of this citation and acknowledge receipt of a copy thereof this April 29th, A. D. 1903.

R. H. CLARKE,
Proctor for F. G. Evans, Claimant and Appellee.

(Endorsed:) No. 1012, U. S. district court southern district of Alabama. The United States of America against the steamship "Blackheath." Filed this April 29th, A. D. 1903. Richard Jones, clerk.

Certificate.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

I, Richard Jones, clerk of said court, do hereby certify that the above and the foregoing eleven pages contain a full, true, and correct transcript of the record and proceedings had in said court in Admiralty Cause Number 1012, The United States of America against the British steamship "Blackheath," F. G. Evans, claimant thereof, as fully as same remain of record and file in my office as such clerk.

Witness my hand and the seal of said court at the city of Mobile, Alabama, this the 4th day of May, A. D. 1903.

[SEAL.] RICH'D JONES,
Clerk U. S. District Court for the Southern District of Alabama.

(Indorsement on cover:) File No. 18931. S. Alabama, D. C., U. S. Term No. 703. The United States, appellant, *vs.* F. G. Evans, claimant of the British steamship "Blackheath." Filed May 14, 1903.

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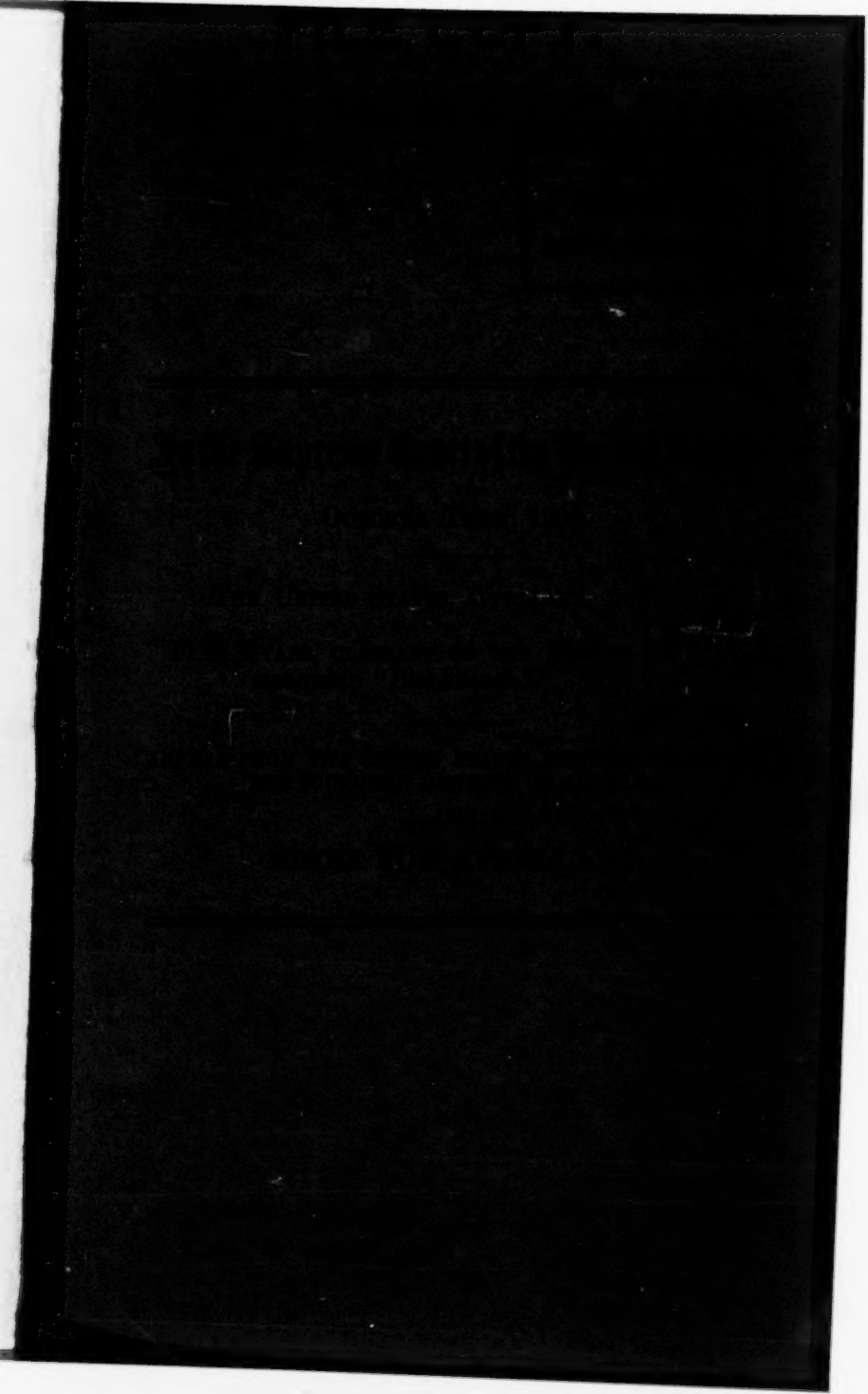

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
F. G. EVANS, CLAIMANT OF THE BRITISH steamship "Blackheath." } No. 34.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR APPELLANT.

STATEMENT.

Whether the alleged injury was a maritime tort and within the jurisdiction of a court of admiralty is the sole question presented by this record.

In Mobile Bay the Government constructed and maintains a narrow ship channel along which vessels pass on their way from the open sea to the port. Adjacent to this channel, as aids to navigation, it also erected, owns, and sustains a system of lights.

While the British steamship *Blackheath* was being navigated from the ocean to Mobile, by reason of alleged negligence, it struck and destroyed beacon No. 7.

9408—04——1

A libel *in rem* against the vessel was filed in the district court to recover for the damage.

F. G. Evans, master of the ship, intervened, claimed possession, and answered in behalf of the owner. He admitted the collision and destruction of the beacon, but denied negligence and liability. In the answer he said (R., 6):

> Respondent does not know and can not answer as to the extent or pecuniary amount of damage to the beacon by the collision. So far as he could see *it was driven under water* and there was nothing he could do in the way of saving any part of it or of reducing the pecuniary damage sustained.

At the hearing a witness for libelant testified as to the situation, character, and construction of the structure on which the destroyed light was placed; and upon motion the court dismissed the libel for want of jurisdiction of the subject-matter (R., 7).

The court found and held (R., 7, 8):

> The question in this case is, Where was the injury sustained—on land or on water? The proof is that the structure injured in this case was a permanent one. It was not floating or susceptible of being floated. It was located 15 or 20 feet distant from the channel of the river or bay, about 2 miles south of the city of Mobile, in the midst of water 12 or 15 feet deep. It was constructed of piles driven into the soil at the bottom of the water to a depth of 12 or 13 feet, which piles were braced with iron bars above the top of the water. The piles extended

some distance above the water, on the top of which a platform of 2 by 12 inch planks was fastened. On this platform an iron framework was erected to the height of 15 or 20 feet, to which a beacon light was suspended. The structure was an immovable one—that is, not a floating structure or one susceptible of being floated. It was not on the water, but was below the surface of the water, resting well down in the soil at the bottom of the river and extending far above the top of the water.

I think that in legal contemplation it was land.

It seems to me clear, under the decisions, that the injury sued for is not a subject of admiralty jurisdiction.

The Government contends the tort was a maritime one, having been committed on navigable waters.

Appeal was taken directly to this court, the only question involved being one of jurisdiction.

ARGUMENT.

I.

The record shows that piles were driven into the bottom of the bay where the water was at least 12 feet deep, and that on these was set up the framework which supported the light. The structure had no connection with the shore, and its only purpose evidently was to support the beacon placed there solely in aid of navigation. By reason of negligence, want of skill, and improper conduct of the parties navigating the *Blackheath* it violently struck and completely demolished the piles, superstructure, and lens light. The

answer to the libel says, in reference to the destruction of the beacon, "It was driven under water and there was nothing he could do in the way of saving any part of it."

Was the alleged tort committed on land or water, as those words are understood in admiralty?

In *The Plymouth* (1865—3 Wall., 20), where damages were sought against a ship because fire negligently communicated from it destroyed a warehouse on the shore, this court decided that jurisdiction of torts in admiralty depends upon locality—that where the cause of action is completed on navigable waters admiralty has jurisdiction, but where it is completed on land the remedy belongs to the courts of common law. Mr. Justice Nelson, delivering the opinion, said (pp. 35, 36):

> The jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed on board the vessel, but upon its having been committed upon the high seas or other navigable waters.
>
> A trespass on board of a vessel, or by the vessel itself, above tide water, when that was the limit of jurisdiction, was not of admiralty cognizance. The reason was, that it was not committed within the locality that gave the jurisdiction. * * *
>
> The jurisdiction of the admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas or navigable waters where it occurred. Every species of tort, however occurring, and

> whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance. * * *
>
> The whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the juristion depends—on the high seas or navigable waters.

The Plymouth was cited and approved in *Ex parte Phœnix Insurance Company* (118 U. S., 618), *Johnson* v. *Chicago and Pacific Elevator Company* (119 U. S., 388), and *Homer Ramsdell Transportation Co.* v. *La Compagnie Générale Transatlantique* (182 U. S., 406, 411).

No doubt seems to have been suggested in any of the above cases that the tort was consummated on land.

In *The Rock Island Bridge* (1867—6 Wall., 213, 215)—a proceeding *in rem* against a bridge for damage to a ship—jurisdiction was denied. Mr. Justice Field, speaking for the court, said (pp. 215, 216):

> There is no doubt * * * that the jurisdiction of the admiralty extends to all cases of tort committed on the high seas, and in this country on navigable waters. For the redress of these torts the courts of admiralty may proceed *in personam*, and when the cause of the injury is the subject of a maritime lien may also proceed *in rem*. The latter proceeding is the remedy afforded for the enforcement of liens of that character. * * *
>
> The lien and the proceeding *in rem* are, therefore, correlative—where one exists the other can be taken, and not otherwise. * * *

> (P. 216.) A maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters. * * * But it can not arise upon anything which is fixed and immovable, like a wharf, a bridge, or real estate of any kind. Though bridges and wharves may aid commerce by facilitating intercourse on land or the discharge of cargoes they are not in any sense the subjects of maritime lien.

II.

This court has not attempted to give a general definition of what is land and what is water within the meaning of the admiralty law and the rule adopted in *The Plymouth.*

In *The Robert W. Parsons* (191 U. S., 17, 33) it was held that repairs to a ship in a dry dock were not made on land. Mr. Justice Brown, speaking for the court, said (p. 33):

> A further suggestion, however, is made that the contract in this case was not only made on land, but was to be performed on land, and was in fact performed on land. This argument must necessarily rest upon the assumption that repairs put upon a vessel while in dry dock are made upon land. We are unwilling to admit this proposition. A dock is an artificial basin in connection with a harbor, used for the reception of vessels in the taking on or discharging of their cargoes, and provided with gates for preventing the rise and fall of the waters occa-

sioned by the tides, and keeping a uniform level within the docks. A dry dock differs from an ordinary dock only in the fact that it is smaller, and provided with machinery for pumping out the water in order that the vessel may be repaired. All injuries suffered by the hulls of vessels below the water line, by collision or stranding, must necessarily be repaired in a dry dock, to prevent the inflow of water, but it has never been supposed, and it is believed the proposition is now for the first time made, that such repairs were made on land. Had the vessel been hauled up by ways upon the land and there repaired a different question might have been presented, as to which we express no opinion; but as all serious repairs upon the hulls of vessels are made in dry dock, the proposition that such repairs are made on land would practically deprive the admiralty courts of their largest and most important jurisdiction in connection with repairs. No authorities are cited to this proposition and it is believed none such exist.

I have not succeeded in finding any adjudicated case involving injury by a ship to a beacon set up in navigable waters. Bridges, piers, and wharves which pertain to the land are, in fact, mere extensions of the shore, and therefore torts to them are distinctly different from torts to structures lawfully within navigable waters, put there solely as aids to navigation. The question now raised was not decided in *The Plymouth* nor has it been in any case in this court of which I am aware.

Mr. Hughes, in his work on Admiralty, says (p. 183):

> The principle that wharves, bridges, and piers are parts of the shore applies to those which are attached directly or intermediately through others to the bank or shore line. But piles and structures attached to the bottom and surrounded by water are within navigable waters, and admiralty has jurisdiction of suits for injuries inflicted by them. On principle it ought also to have jurisdiction of suits for injuries received by them, as they can hardly be considered extensions of the shore.

In *The Arkansas* (1883—17 Fed. Rep., 383, district of Iowa) Judge Love, discussing what constitutes a maritime tort, in an *obiter dictum* said (p. 386):

> When is the locality or place where a tort is committed within admiralty cognizance, and when not? * * * Though highly desirable, it would no doubt be extremely difficult to lay down any general rule or criterion by which the jurisdiction could be tested in all cases. * * * The solution of the question of jurisdiction does not depend, in my judgment, upon the fact of the structure being solid or floating, realty or personalty, firmly affixed to the bed of the river or otherwise. It is a question of place, and of the rightfulness of the structure. Is the structure in the navigable bed of the river, and is it there by lawful authority, or not? If the structure is placed in the navigable bed of the river without rightful license or authority, and a vessel is injured by it, the party creating the obstruction may be sued for the injury in an

action *in personam* in a proper court of admiralty. This is manifest from the cases of *Atlee* v. *Packet Co.*, and *Railroad Co.* v. *Steam-tow Co.* (23 How., 209.)

The owners of the boat can not, of course, in such case proceed *in rem* against the solid structure, whatever it may be, whether a bridge, a pier, boom, or signal post, because there can be no maritime lien upon such a structure to be enforced in the admiralty by its seizure and sale. Such is the doctrine in the case of *The Rock Island Bridge* (6 Wall., 213).

But suppose, on the other hand, the structure whether bridge, boom, pier, or light-house, be a lawful one; suppose it to be placed in the navigable bed of the river by lawful authority, and suppose some reckless mariner should carelessly run his vessel upon it and injure it; can it be doubted that the tort thus committed would be within the admiralty jurisdiction? Can it be doubted that in such case the owner of the structure might proceed against the owners of the boat *in personam*, or against the boat itself *in rem*? The tort itself would be a marine tort; it would be, as to place, within the admiralty jurisdiction. The owner of the structure would have a right to proceed *in rem* against the boat, because, from its nature, a maritime lien could attach to the boat. The owner of the structure would, in this respect, have a certain advantage over the owner of the boat, since the latter, if injured, would be restricted to the remedy *in personam*. And this is exactly as it should be, since the boat is a moving,

transitory thing, and if no maritime lien attached to it, and no remedy existed in admiralty to enforce the lien, the boat might take its departure into distant States or foreign jurisdictions, leaving the owner of the structure without any effectual remedy. Indeed, the admiralty jurisdiction owes its existence chiefly to the fact that the common law tribunals, by reason of their modes of procedure, and their doctrine that possession is indispensable to a lien upon movables, are wholly inadequate to give relief against ships and vessels afloat upon the high seas and other navigable waters of the earth.

There is, therefore, good reason why the maritime lien and the admiralty jurisdiction should obtain in favor of the owner of a lawful structure injured by the negligent navigation of a colliding vessel. The common law could give him no adequate relief. But this reason does not apply reciprocally in favor of the owner of the vessel as against the solid structure, which can not move off and leave the owner of the vessel without remedy. Hence there is no necessity for establishing a lien upon such a structure, or enforcing the plaintiff's claim by a proceeding *in rem*. And since it is settled beyond question by *The Atlee* and *Tow-boat* cases that the owners of the boat would have a right to proceed *in personam*, in admiralty, against the owners of the structure, why should the reciprocal right of the owners of the structure to a remedy in admiralty against the boat be denied?

In *The Professor Morse* (1885—23 Fed. Rep., 803), Nixon, J., said in reference to the reasoning of the court

in *The Arkansas* touching the jurisdiction of admiralty in torts committed upon structures lawfully within navigable waters (p. 807):

> However much I might be inclined, if the question were an open one, to follow this *obiter dictum* of the learned judge, I am constrained by the authority of *The Plymouth* to hold in the present case that the libellants have mistaken their court. * * *

In *The F. & P. M. No. 2* (33 Fed. Rep., 511, 514), Dyer, J., said (p. 514):

> In the case of *The Arkansas* (17 Fed. Rep., 383) it was decided, in a well-considered opinion by Judge Love, that where a vessel is injured by collision with a structure unlawfully placed in the navigable channel of a river, the party creating the obstruction may be sued for the injury in an action *in personam*, in a proper court of admiralty; but the owners of the vessel can not, in such a case, proceed *in rem* against the solid structure, whatever it may be, because there can be no maritime lien upon such a structure, to be enforced in the admiralty by its seizure and sale. Further, that where a structure lawfully created in the navigable channel of a river is injured by collision caused by the negligent management of a vessel, the owner of such structure may proceed in an admiralty court, by action *in personam* against the owners of the vessel, or *in rem* against the vessel. If this be the law—and I have no doubt it is—no reason is perceived why the owner of a raft of logs which is in course of transit on navigable waters may not

proceed *in rem* against a boat or vessel which negligently runs into and destroys or injures the raft.

The City of Lincoln (1885—25 Fed. Rep., 835, district court southern district of New York, Brown, J.)

This was a libel against a wharfinger to recover damages done to steel blooms. Before they were removed the pier broke down and they were thrown into the water. Some were lost and others damaged. The tort was held to be maritime. The court said (p. 837):

> In this case the wharfinger's negligence was wholly upon the land, or in reference to a structure resting upon and built into the ground; but the injury to the libellant's steel blooms was effected wholly in the water, into which they were thrown through the breaking down of the wharf. The whole "substance and consummation of the injury" were, therefore, in the water. It was the water that did the damage. That was the place of the damage, and consequently the place of the tort, for the purposes of jurisdiction. Had the goods been, for instance, crockery or glassware, which were broken or otherwise injured through the breaking down of the wharf, but without being thrown into the water, the injury in that case would have been consummated upon the land, and no jurisdiction in admiralty would have attached. (*Rock Island Bridge*, 6 Wall., 213; *The Mary Stewart*, 10 Fed. Rep., 137; *The Accame*, 20 Fed. Rep., 642.) If the blooms in this case had not been thrown into the water, the injury in question would not have arisen. But as this injury was caused wholly by the water into

> which the blooms were thrown, if this arose through the wharfinger's negligence, such negligence was a marine tort, of which this court has jurisdiction.

III.

The lower Federal courts have decided a number of cases wherein they undertook to apply the rule laid down in *The Plymouth*. From them some are cited to illustrate the results.

The Neil Cochran (1872—Brown's Admiralty, 164, 165, Fed. Cases, 7996 and 10087. Sherman, D. J.).

A vessel ran into an iron swing bridge erected across the Cuyahoga River and injured it. Held, admiralty had no jurisdiction. "The origin of the wrong was upon navigable water, but the whole damage resulting therefrom was done upon the land, the bridge being attached to and a part of the land."

The Ottawa (1872—eastern district of Michigan. Brown's Admiralty, 356; Fed. Cases, 10616).

This was a libel *in rem* to recover for damages inflicted upon a wharf extending from the shore by collision with the propeller *Ottawa*. It was dismissed for want of jurisdiction. The court said:

> Upon a careful consideration of the question, and of the authorities bearing upon it, I must hold that a wharf is but an improvement or extension of the shore; that it is real estate, and that an injury done to it, whether through negligence or design, no matter by what agency, is an injury done wholly on land and not on the water, and therefore does not constitute a marine tort.

The Maud Webster (1876 and 1877—8 Ben. 552; Fed. Cases 9302. Blatchford, D. J.).

A libel to recover for damages sustained in consequence of the schooner's having come in contact with a derrick used in constructing a pier. The evidence showed the damaged derrick was not afloat, did not rest upon any floating support or upon any boat or vessel or raft which at any time floated, and was not anchored, but was sustained against the force of gravity wholly by direct pressure upon the soil of the earth. The court held, upon the authority of *The Plymouth*, *The Neil Cochran*, and *The Ottawa*, that the tort was not maritime, the locality of the thing injured was not upon the water, and that admiralty had no jurisdiction, saying:

> The property was not in use for purposes of navigation, and was none of it afloat, and was all of it supported by direct pressure on the soil of the earth. It was no more upon the water, and the injury to it did not any more happen on the water than did the injury to the wharf in the case of *The Plymouth*.

The Mary Stewart (1881—10 Fed. Rep., 137).

Injury was done to libelant while standing on a wharf by a bale of cotton which, while being hoisted on board, fell before it reached the ship's rail and struck him. The libel was dismissed upon the ground that the injury happened on the land.

The Professor Morse (1885—23 Fed. Rep., 803. District of New York. Nixon, J.).

Libel for tort to marine railway extending from the

shore under the water. Dismissed for want of jurisdiction, the court holding that the railway was not a floating structure and the tort, therefore, not within admiralty jurisdiction.

City of Milwaukee v. *Curtis* (1889—37 Fed. Rep., 705. Eastern district of Wisconsin. Jenkins, J.).

Injury was inflicted by a vessel upon a bridge. The libel was dismissed for want of jurisdiction. The court held:

> Bridges are merely prolongations over waters of highways upon land. They are not afloat. Like wharves and piers they are connected with the shore. * * * They concern commerce upon land, not upon the sea. Within the intendment of the maritime law they are—equally with wharves and piers—structures upon or connected with the shore. They pertain to the land, not to the sea; and so are without the cognizance of the admiralty jurisdiction. An injury thereto can not be said to have occurred upon the water.

The H. S. Pickands (1890—42 Fed. Rep., 239, 240, district of Michigan. Brown, J.).

Libel *in rem* for injuries received by a workman who, when attempting to descend from the vessel by means of a ladder extending therefrom, was thrown to the dock and injured. The court held admiralty had no jurisdiction and said (p. 240):

> It has never been doubted since the case of *The Plymouth* (3 Wall., 20), that to enable us to take cognizance of a maritime tort the injury must have been consummated and the damage

> received upon the water. The mere fact that the wrongful act was done upon the ship is insufficient. Subsequent adjudications have in nowise tended to limit or qualify this rule.

The Mary Garrett (63 Fed. Rep., 1011, 1013).

Libel *in rem* to recover damages for personal injuries to seaman employed on a vessel caused by negligence in unloading freight which was discharged and fell upon him while on the wharf. The court dismissed the libel on the ground that the injury was received on land.

The Strabo (1898—90 Fed. Rep., 110. District court, eastern district of New York. Thomas, D. J.).

Libelant, employed in loading a ship, attempted to leave it by means of a ladder which, by reason of the master's negligence, was not secured to the rail. The ladder fell and he was thrown on the dock and injured. Held, that the case was within admiralty jurisdiction. This is an instructive opinion, citing many authorities. The court said (p. 111):

> All cases for ultimate authority refer to *The Plymouth* (3 Wall., 20).
>
> (P. 113.) If a ship carpenter were employed to mend a yard on a vessel lying at a dock, and, by the master's negligence, he were caused to fall, and he should fall upon the vessel or in the water, would this court have jurisdiction; but if he should strike on the dock, would this court be without jurisdiction? If a passenger, standing at the gangway for the purpose of alighting, were disturbed by some negligent act of the master, would the jurisdiction of this court

depend upon the fact whether he fell on the deck and remained there or whether he was precipitated upon the dock in the first instance or finally landed there after first falling on some part of the ship? If a seaman by the master's neglect should fall overboard, would this court entertain jurisdiction if the seaman fell in the water and decline jurisdiction if he fell on the dock or other land? The inception of a cause of action is not usually defined by such a rule.

Leathers v. *Blessing* (105 U. S., 626).

Rundell v. *La Compagnie Générale Transatlantique* (C. C. A., 1900—100 Fed. Rep., 655).

Dailey v. *City of New York* (128 Fed. Rep., 799).

De Lovio v. *Boit* (1815—2 Gall., 398; Fed. Cases, 3776).

See also 6 Rose's Notes, pages 459, 460, for a collection of authorities in which *The Plymouth* is cited.

IV.

The origin, nature, and jurisdiction of admiralty courts are exhaustively discussed in various opinions of this court. They demonstrate a well-defined purpose to construe liberally the terms "all cases of admiralty and maritime jurisdiction" and to ascertain its boundary "by a reasonable and just construction of the words used in the Constitution, taken in connection with the whole instrument and the purposes for which admiralty and maritime jurisdiction were granted to the Federal Government." (*The Steamer St. Lawrence*, 1 Black., 522–527.)

In *Insurance Company* v. *Dunham* (11 Wall., 1, 22), Mr. Justice Bradley, delivering the opinion, pointed out the origin of admiralty courts, reviewed the history of the holdings of this court touching their jurisdiction, and in a lucid way showed how it has been extended to meet the enlarged requirements necessitated by the progress of events and the growth of the country. He said (p. 23):

> The admiralty courts were originally established in that [England] and other maritime countries of Europe for the protection of commerce and the administration of that venerable law of the sea which reaches back to sources long anterior even to those of the civil law itself; which Lord Mansfield says is not the law of any particular country, but the general law of nations; and which is founded on the broadest principles of equity and justice, deriving, however, much of its completeness and symmetry, as well as its modes of proceeding, from the civil law, and embracing, altogether, a system of regulations embodied and matured by the combined efforts of the most enlightened commercial nations of the world.
>
> (P. 24.) This court has frequently declared and decided that the admiralty and maritime jurisdiction of the United States is not limited either by the restraining statutes or the judicial prohibitions of England, but is to be interpreted by a more enlarged view of its essential nature and objects, and with reference to analogous jurisdic-

> tions in other countries constituting the maritime commercial world, as well as to that of England.
>
> (P. 25.) In accordance with this more enlarged view of the subject, several results have been arrived at widely differing from the long-established rules of the English courts.
>
> (P. 26.) As to contracts it has been equally well settled that the English rule which concedes jurisdiction, with a few exceptions, only to contracts made upon the sea and to be executed thereon (making *locality* the test) is entirely inadmissible, and that the true criterion is the nature and subject-matter of the contract, as whether it was a maritime contract having reference to maritime service or maritime transactions.

In *Waring et al.* v. *Clarke* (1847—5 How., 440, 450), in an exhaustive opinion Mr. Justice Wayne, after reviewing the limitations and tests of admiralty jurisdiction conferred upon courts of the United States, distinctly repudiated the doctrine of the English court, that it does not include a tort occurring within the body of any county, saying (p. 463):

> Our conclusion is, that the admiralty jurisdiction of the courts of the United States extends to tide waters, as far as the tide flows, though that may be *infra corpus comitatus*.

In *The Genesee Chief* (1851—12 How., 443), Chief Justice Taney discussed the powers of the admiralty courts of the United States, repudiated the English doctrine confining their jurisdiction to the ebb and flow of the tide and held that it extended to all public navigable waters on which commerce may be carried

on between different States or nations. Among other things he said (p. 453):

> Courts of admiralty have been found necessary in all commercial countries, not only for the safety and convenience of commerce, and the speedy decision of controversies, where delay would often be ruin, but also to administer the laws of nations in a season of war.
>
> (P. 454.) There is certainly nothing in the ebb and flow of the tide that makes the waters peculiarly suitable for admiralty jurisdiction, nor anything in the absence of a tide that renders it unfit. If it is a public navigable water on which commerce is carried on between different States or nations, the reason for the jurisdiction is precisely the same. And if a distinction is made on that account, it is merely arbitrary, without any foundation in reason, and, indeed, would seem to be inconsistent with it.
>
> (P. 457.) Certainly there can be no reason for admiralty power over a public tide water which does not apply with equal force to any other public water used for commercial purposes and foreign trade.
>
> (P. 459.) The principal objection made to the admiralty jurisdiction is the want of trial by jury. * * * But experience in England has proved that a wider range of jurisdiction was necessary for the benefit of commerce and navigation; and that they needed courts acting more promptly than courts of common law, and not entangled with the niceties and strictness of common-law pleadings and proceedings.

In *Ex parte Easton* (95 U. S., 68) this court held, in an opinion by Mr. Justice Clifford, that claims for wharfage are cognizable in admiralty. He said (p. 75):

> Standard authorities, as well as reason, principle, and the necessities of commerce, support the theory that the contract for wharfage is a maritime contract, which, in the case supposed, gives to the proprietor of the wharf a maritime lien on the ship or vessel for his security.

The commission of a vice-admiralty judge in the Colonies, granted by the King, gave him cognizance of all cases, civil and maritime, "which do any ways concern suits, trespasses, injuries, extortions, demands, and affairs, civil and maritime, whatsoever, between merchants or between owners and proprietors of ships, or other vessels, and merchants, or other persons whomsoever, with such owners and proprietors of ships or other vessels whatsoever, employed or used, or between any other persons howsoever had, made, began, or contracted for any matter, cause, or thing, business, or injury whatsoever, done or to be done as well in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high-water mark, as upon any of the shores, or banks adjoining to them or either of them, together with all and singular, their incidents, emergencies, dependencies annexed and connexed causes whatsoever." (Benedict, Adm., sec. 151.)

"These general words are of the most comprehensive character, and include all matters which are in their

nature maritime, while all those causes of which jurisdiction has been denied to the English admiralty, are especially enumerated as admiralty and maritime causes." (Id., section 161.)

"If we examine the etymology, or received use of the words *admiralty* and *maritime jurisdiction*, we shall find that they include the judicial jurisdiction of the admiral and of all maritime causes, or causes arising from things done upon and relating to the sea; or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea, or navigable waters of the nation, or upon the high sea." (Id., section 191.)

Crosse v. *Diggs*, in the King's Bench, Michelmas term, 15 Charles II, Siderfin, page 158.

"Fuit move pur Prohibition al Admiralty, Quia suit fuit la pur profits del Beaconage dun Rock in le Mere proper * * * in Cornwall, Et fuit dit que come le profits des Beacans appent al Admiral issint le suite pur eux doet estre en son Court que est le Admiralty & ceo coment le Rock soit parceil del Terre & Freehold dun auter cibien que Hospitalls, etc., sont visitables per Levesque coment sont Temporal Inheritances & 4 Inst. l. a. Beaconage fuit cite & de cel opinion fueront tout le Court & uncore ils dionts que le Beacon mesme poit etre l inheritence d'ascun private person & impleadable in les Courts del Roy."

Cokes Institutes, part 4, pages 148, 149—Beacons, Lights of the sea, Light-houses, and Sea marks.

"Before the reign of Edward III they (beacons) were but stacks of wood set upon high places which were fired when the coming of enemies were descried, but in his own reign pitch boxes as now they be, were instead of those stacks of wood set up, and this properly is a beacon * * *."

"At the common law none but the King could erect any of these three (beacons, light-houses, and sea marks), whichever was done by the King's commission under the great seal as taking some few examples of many. But of latter times by the letters patents granted to the lord admiral he hath power to erect beacons, sea marks, and signs for the sea."

The admiralty court act of 1861 (24 Victoria, c. 10) enacts that the court of admiralty shall have jurisdiction over any claim for damage done by any ship. (Williams and Bruce Admiralty Jurisdiction, 3d ed., p. 73.)

The jurisdiction of the French Admiralty has always been of the widest and most salutary character.

The ordinance, among other things, provides:

> They shall likewise take cognizance of damages done by ships to the fisheries, either upon the coasts or in navigable rivers, and of those that the ships shall receive, and likewise of the ways appointed for hauling up ships coming from the sea, if there be no regulation, title, or possession to the contrary.
>
> They shall also take cognizance of the damages done to the keys, banks, moles, palisadoes,

and other works cast up, against the violence of the sea, and shall take care that the depth of the ports and roads be preserved and kept clean. (Benedict's Amiralty, secs. 172, 175.)

V.

The answer of respondent distinctly states that the beacon, when struck by the ship, *was driven under the water*. As in *The City of Lincoln* (*supra*), the whole substance and consummation of the injury may, therefore, be said to have been in the water. That was the place where the damage was done and, consequently, the locus of the tort.

If the destroyed light had rested upon a floating buoy, securely chained to piles driven into the bottom of the bay, there can be no doubt that the damage inflicted would have been cognizable in admiralty, in any view of the case. Does the fact that the light rested upon the top of piles, entirely surrounded by navigable water instead of upon a buoy chained thereto, deprive the admiralty court of power to redress the wrong?

I respectfully submit that there is no tenable distinction between the two cases, and that every reason of policy or principle which would give to the admiralty court jurisdiction in the former case applies in the latter.

The beacon was in no proper sense land, nor any part thereof. It was not connected with the shore, and was not erected for any purpose pertaining to

the land. The sole object of its existence was in aid of navigation upon the water, and it will be in the interest of this if the alleged wrong is held to be cognizable in a court of admiralty. Lights are highly important adjuncts to navigation, and their safety will be better secured by the speedy processes of admiralty courts than by the actions *in personam* in a court of law.

In *The Gas Float Whitton*, No. 2, Law Reports Appeal Cases (1897), pages 337, 349, where it was held that a float used in connection with a harbor light was not the subject of salvage, Lord Macnaghten, replying to the argument that it was in the interest of navigation and commerce that beacons, valuable in themselves and for their utility, should be preserved, and that to adjudge them properly subject to salvage claims would tend to effect that end, said: "There would be much force in the appellants' argument if it were clear that the proposed extension of the doctrine of salvage would conduce to the preservation of beacons."

It seems clear from the decision of this court in *The Robert W. Parsons*, holding a dry dock is not land within the meaning of admiralty law, that no mere technical distinction of the common law will be permitted to deprive admiralty courts of jurisdiction over those subjects which the reason for their existence and the nature of their powers demand they should have. No stronger reason appears for holding a beacon constructed upon piles in the midst of navigable waters is land than for holding a dry dock constructed upon the shore is land.

It has been found necessary in England to extend admiralty jurisdiction to all claims for damage inflicted by a ship, whether consummated on land or water, and it would seem wise policy for our admiralty courts to exercise, as near as may be, the same powers.

There is reason to think that under the ancient law of England the destruction of a beacon maintained by the Admiral in the open sea would have been cognizable in his court and that the vice-admiral in colonial times would have granted relief for an injury by a ship to a light in navigable waters, erected and maintained by the Crown. There is nothing in the opinions of this court which adjudges such a cause without "admiralty and maritime jurisdiction." This has heretofore been liberally extended to meet the demands of the country and to carry out the wise purposes for which it was originally instituted, all of which, I submit, require that it should include the present controversy.

If in admiralty there is no adequate remedy for injuries to harbor and channel lights by foreign ships, the Government is without power to properly protect and preserve these highly important adjuncts to commerce and navigation.

I RESPECTFULLY ASK THAT THE DECREE OF THE COURT BELOW BE REVERSED.

J. C. McREYNOLDS,
Assistant Attorney-General

OCTOBER, 1904.

O

Office Supreme Court, U. S.
FILED
NOV 2 1904
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

October Term, 1904

The United States, *Appellant*, vs. F. G. Evans, *Claimant*, of the British Steamship Blackwater	No. 50

BRIEF FOR APPELLEE.

E. H. Clarke,
Bert Carter,
Attorneys for Appellee.

IN THE

Supreme Court of the United States

October Term, 1904

THE UNITED STATES, *Appellant*,

vs.

F. G. EVANS, *Claimant*,
OF THE BRITISH STEAMSHIP BLACKHEATH

No. 34.

BRIEF FOR APPELLEE.

A tort, to be a subject of admiralty jurisdiction, must have been consummated, in some navigable area, (1) merely on or in or (2) through action of the water. This proposition is in harmony with the text of all of the decisions which the Assistant Attorney General, counsel for appellant, cites on his brief; nor can his argument be said to impeach it.

Where the wrongful act and its injurious consequences were indistinguishable, with respect to time and place, the inquiry has turned on the mere locality of the act itself. Under this head fall the following cases, among those cited by the Assistant Attorney General:

> The Plymouth, 3 Wall., 20; *ex parte* Phoenix Insurance Co., 110 U. S., 610; Johnson *vs.* Chicago and Pacific Elevator Co., 119 U. S., 388; Homer Ramsdell Transportation Co. *vs.* La Campagnie General Transatlantique, 182 U. S., 406; the Rock

Island Bridge, 6 Wall., 213; The Arkansas, 17 Fed. Rep., 383; Philadelphia, Wilmington and Baltimore Railroad Co. *vs.* Harve de Grace Steam Towboat Co., 23 Howard, 209; The F. and P. M., No. 2, 33 Fed. Rep., 511; The Neil Cochran, Fed. Cases 7996 and 10087; The Ottawa, Fed. Cases 10616; The Maud Webster, Fed. Cases 9302; The Professor Morse, 23 Fed. Rep., 803; City of Milwaukee *vs.* Curtis, 37 Fed. Rep., 705.

In other cases discussed or cited by the Assistant Attorney General the inquiry was whether the injury following on the tortious act was accomplished by supervening action of the water, mechanical or chemical. These are:

The City of Lincoln, 25 Fed. Rep., 835; The Mary Stewart, 10 Fed. Rep., 137; The Professor Morse, 23 Fed. Rep., 803; The H. S. Pickands, 42 Fed. Rep., 239; The Mary Garrett, 63 Fed. Rep., 1011; The Strabo, 90 Fed. Rep., 110.

One case from which the Assistant Attorney General takes comfort, viz.: The Robert W. Parsons, 191 U. S., 17, does not fall in either of these groups, its subject being not a tort of any kind, but a contract. The court in that case, over the dissent of four justices, recognized strong reasons of good policy as dictating that, parties to a contract for repairs to a ship having taken no thought of any distinction between repairs to be made while the ship should be in the water and those which could only be made after she was clear of the water in dry dock, and having the benefit of the admiralty courts for redress of a breach of the contract in the one instance, should not be denied it in the other. But even in this opinion the court had the care to say:

"There is no doubt of the proposition that a dry dock itself is not a subject of salvage service or of admiralty jurisdiction, because it is not used for the purpose of navigation."

Is this not to say that the legal status of the dock itself, when the agent or the victim of a tort, is referable, not to any purpose or prevision of any persons concerned—if a tort can ever be imagined to have been prearranged by such persons—but to its physical properties and surroundings alone? And in a case of injury to the dock, constituting a tort, would not the court hold again, as it held in Cope *vs.* Vallette Dry Dock Co., 119 U. S., 625, that the matter was not cognizable in an admiralty court?

The structure with which this case is concerned was firmly founded on the ground and was not subject to any play or flux of that element in which all things marine move and act, viz., water. It is of no consequence, as was pointed out by the learned judge in The Maud Webster, that the earth on which the foundation of the structure rested was submerged by water. The controlling fact in determining the character of the beacon here in question is the same that the court pointed out in reference to the derrick, or rather the guy rope attached to a derrick, against which the Maud Webster struck, viz., that "the property was not in use for purposes of navigation, and was none of it afloat, and was all of it supported by direct pressure on the soil of the earth. It was no more upon the water, and the injury to it did not any more happen on the water than did the injury to the wharf in the case of The Plymouth."

The vertical portion of that derrick was a single "upright" with four guy wires joined to it, all being attached to the surface of the earth under the water.

With reference to the decision of the House of Lords in The Gas Float Whitton, No. 2, Law Reports Appeal Cases 337, where a harbor light, similar to that with which this case is concerned, was held not to be a subject of salvage, the Assistant Attorney General has quoted (Brief, p. 25), Lord Macnaughten's observation that "there would be much force in the appellant's argument if it were clear that the proposed extension of the doctrine of salvage

would conduce to the preservation of beacons." This was the view taken by one lord alone of those who concurred in the conclusion reached, in favor of the appellees. No such consideration is suggested by the Lord Chancellor or either of the three other lords who spoke their opinions. These were all content to rest the decision on the structural character and the purposes of the light.

The decisions to which I have referred and my comments on them have to do with structures of a permanent nature and still serving some use. The subject of the case of the Philadelphia, Wilmington and Baltimore Railroad Co. *vs.* the Philadelphia and Harve de Grace Steam Towboat Co. (23 Howard, 209), was some disconnected piles not reaching to the surface of the water, which, having served the temporary uses for which they had been placed there by the bridge contractors, were negligently allowed to remain after the work was abandoned. They would not, if remaining in this situation, have performed any function in any undertaking that might be prosecuted out of the water; and probably any definition of the word "land" which could include them would be unreasonably broad. It will be observed, however, that the point on which the court's decision turned was not the character of the obstruction, as of the land or of the water, but that its situs, which was *infra corpus comitatus*, was as much subject to admiralty jurisdiction as the high seas themselves. In view of what this court has since said, that case is hardly to be regarded as authority except on this attempted distinction between the high seas and water partly land-locked.

In all the remaining cases cited for appellant, dealing in any way with the character of the structure causing or sustaining the injury, except the very plain case of The F. and P. M., No. 2, relating to a raft of logs, the locus of the structure was held to be land.

If the present case be regarded from the other point of view, I have suggested, viz., the sequence between the

dynamic cause of the injury and the injury itself which resulted, the authorities are equally decisive of the lack of jurisdiction of the admiralty court. In most of the cases cited by the Assistant Attorney General, as in this case, the damage was not done through action of the water, and for this reason the libel was dismissed.

Probably the most instructive of the District Court cases cited is The City of Lincoln. There the facts weighed by the court were that the steel blooms in question were on land when the destructive casualty occurred but were lost to the owner because they were precipitated into and submerged by the water. "It was the water that did the damage," says the court; and, therefore, the court had jurisdiction to right the wrong. The court adds: "Had the goods been, for instance, crockery or glassware, which were broken or otherwise injured through the breaking down of the wharf, but without being thrown into the water, the injury in that case would have been consummated upon the land, and no jurisdiction in admiralty would have attached."

In The Mary Stewart, the H. S. Pickands, and The Mary Garrett the hurt was done by or on the land, and therefore was not cognizable by the admiralty court.

In The Strabo the jurisdiction was questioned by a motion to dismiss the libel without proof made of the various stages of the injury suffered by libelant, and the court reached a decision favorable to its jurisdiction by assuming that some actional hurt was done by the mere projection of his body into the air above the water and without any agency of the land on which he fell a second, probably, later—this assumption, of course, to stand only until the proof should be made.

The Assistant Attorney General refers to the fact that appellant's beacon, when struck by appellee's ship, was "driven under the water." This fact, I submit, is of no significance whatever. The subject of complaint, as particularized in the libel, is that "said beacon, number 7,

Mobile ship channel lights, the piling upon which it was constructed, and the lens lantern suspended therefrom, were completely demolished by the force and violence by which they were struck by the said steamship, Blackheath." There is no suggestion that the injury was aggravated even by the submergence of the structure in the water. The question of jurisdiction would not be different, if, through additional force or other accident of the collision, beacon, platform, piles and all had been cast high upon the shore.

This, indeed, is in all essentials the case of "crockery or glassware" suggested by the court for illustration in The City of Lincoln.

So much for the argument from explicit authority of the adjudicated cases. But to this argument the Assistant Attorney General adds, on pages 17 to 26 of his brief, a review of the theory of maritime jurisprudence at large. For two reasons I shall not follow him through that very interesting treatise. (1) This, with which we have here to deal, cannot now be regarded in the courts of the United States as a question of first impression to be determined by mere *a priori* argument. (2) The considerations of international law and policy to which the Assistant Attorney General appeals might have some place in a prize case originating in a capture on the high seas; but they can hardly effect the construction of the municipal law of any nation—including the jurisdictional distinctions between its courts—under which redress is to be sought for wrongs done between private persons in its ports.

It may be added that in the United States admiralty jurisdiction is not derived from any considerations of international, or even maritime convenience. It is purely the creature of our Constitution, and so shut off from those accretions which, in view of the policy and institutions of other Christian nations, the Assistant Attorney General would commend. With reference to England, especially it is clear that, if our admiralty courts have the ancient

admiralty jurisdiction, they have not that which exists in England today. The following account of that fact is from the opinion of Judge Blatchford in The Maud Webster:

> "In England there is a statute (Act of May 17, 1861, 24 Vict., c. 20, sec. 7) which provides that the High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship. This has been held to give that court jurisdiction over every case of damage done by any ship, and to authorize a suit *in rem* against a vessel, in admiralty by the owners of a breakwater, to recover for injury done by the vessel to the breakwater. (The Uhla Law Rep., 2 Adm. and Eccl., 29 note.) There is no such statute of the United States, giving an enlarged jurisdiction to the courts of admiralty. The question is left to be decided under the provision of the Constitution (Article 3, Sec. 2), which says that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction, and the eighth subdivision of Section 563, of the Revised Statutes, which says that the District Courts shall have jurisdiction of all civil courts of admiralty and maritime jurisdiction.' "

The decree of the District Court, in short, is supported by all the pertinent decisions of the American Courts and should be affirmed.

Respectfully submitted,

R. H. CLARKE,
BENJ. CARTER,
Attorneys for Appellee.

Supreme Court of the United States.

No. 34.—October Term, 1904.

The United States, Appellant, *vs.* F. G. Evans, Claimant of the British Steamship "Blackheath." } Appeal from the District Court of the United States for the Southern District of Alabama.

[November 28, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from the District Court on the question of jurisdiction, which is certified. The case is a libel *in rem* against a British vessel for the destruction of a beacon, Number 7, Mobile ship-channel lights, caused by the alleged negligent running into the beacon by the vessel. The beacon stood fifteen or twenty feet from the channel of Mobile river or bay, in water twelve or fifteen feet deep, and was built on piles driven firmly into the bottom. There is no question that it was attached to the realty and that it was a part of it by the ordinary criteria of the common law. On this ground the District Court declined jurisdiction and dismissed the libel. *The Blackheath*, 122 Fed. Rep. 112.

In *The Plymouth*, 3 Wall. 20, where a libel was brought by the owners of a wharf burned by a fire negligently started on a vessel, the jurisdiction was denied by this Court. See also *Ex parte Phenix Ins. Co.*, 118 U. S. 610. In two later cases there are dicta denying the jurisdiction equally when a building on shore is damaged by a vessel running into it. *Johnson* v. *Chicago and Pacific Elevator Co.*, 119 U. S. 388. *Homer Ramsdell Transportation Co.* v. *La Compagnie Générale Transatlantique*, 182 U. S. 406, 411. And there are a number of decisions of District and other courts since *The Plymouth*, which more or less accord with the conclusion of the court below. 62 C. C. A. 287–290. It would be simple, if simplicity were the only thing to be considered, to confine the admiralty jurisdiction, in respect of damage to property, to damage done to property afloat. That distinction sounds like a logical consequence of the rule determining the admiralty cognizance of torts by place.

On the other hand it would be a strong thing to say that Congress has no constitutional power to give the admiralty here as broad a jurisdiction as it has in England or France. Or, if that is in some degree precluded,

it ought at least to be possible for Congress to authorize the admiralty to give redress for damage by a ship, in a case like this, to instruments and aids of navigation prepared and owned by the Government. But Congress cannot enlarge the constitutional grant of power, and therefore if it could permit a libel to be maintained, one can be maintained now. We are called on by the appellees to say that the remedy for any case of damage to a fixture is outside the constitutional grant.

The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history. As to principle, it is clear that if the beacon had been in fault and had hurt the ship a libel could have been maintained against a private owner, although not *in rem*. *Philadelphia, Wilmington & Baltimore R. R.* v. *Philadelphia & Havre de Grace Steam Towboat Co.*, 23 How. 209. *Atlee* v. *Northwestern Union Packet Co.*, 21 Wall. 389. *Panama Railroad* v. *Napier Shipping Co.*, 166 U. S. 280. Compare *The Rock Island Bridge*, 6 Wall. 213. But, as has been suggested, there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was. *The Arkansas*, 17 Fed. Rep. 383, 387. *The F. & P. M. No. 2*, 33 Fed. Rep. 511, 515. *Hughes, Adm.*, 183. And again it seems more arbitrary than rational to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was an instrument of navigation and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea.

As to history, while as is well known the admiralty jurisdiction of this country has not been limited by the local traditions of England, *The Lottawanna*, 21 Wall. 558, 574, *et seq.*, the traditions of England favor it in a case like this. The admiral's authority was not excluded by attachment even to the main shore. From before the time of Boughton's Articles he could hold inquest over nuisances there to navigation and order their abatement. Art. 7, 1 Black Book, (Twiss,) 224; Clerke's Praxis. 1 Select Pleas in Adm., 6 Seld. Soc. Publ., xlv, lxxx. Articles of Feb. 18, 1633, Exton, Maritime Dicæology, pp. 262, 263; 2 Hale de Port., c. 7, p. 88, in Harg. Law Tracts. Zouch, in Malynes, Lex Merc., 3d ed. 122. Com. Dig. Admiralty, E. 13. See Benedict Adm., 3d ed. § 151; *De Lovio* v. *Boit*, 2 Gall. 398, 470, 471, note. Coke mentions that "of latter times by the letters patents granted to the lord admirall he hath power to erect beacons, seamarks and signs for the sea, &c." 4 Inst. 148, 149. To the French admiral, it is expressly stated, belonged "Contraincte et pugnicion, tant en criminel, que en civil," in this matter. 1 Black Book, 445, 446. See *Crane* v. *Dippa*, 1 Sid. 158. Spelman says: "The place absolutely subject to the jurisdiction of the admiralie, is the sea, which seemeth to comprehend publick rivers, fresh waters, creeks, and surrounded places whatsoever within the ebbing and flowing of the sea

at the highest water." Eng. Works, 2d ed. 220. Finally, by the article of February 18, 1632, all the judges of England agreed that the admiralty jurisdiction extended to "injuries done which concern navigation upon the sea." Exton Maritime Decisions, at fo., pp. 202, 203. And "if the libel be founded upon one single continued act, which was principally upon the sea, though part was upon land, a prohibition will not go." Com. Dig. Admiralty, F. 5. 1 Roll. Abr. 533, pl. 14.

What the early law sense must to have looked to as being the liability of the ship was the notion of the vessel, which was treated as giving it the character of a responsible cause. Reason recognizes this as an extravagance, but admits the fact, for the common law. 1 Sto. Hist. Pleas of the Crown, 1 Solil. Soc. Pub. 64. The same was true in the admiralty. Broughton, *ubi sup.* 5 et. 30. 2 Rot. Parl. 340, 346, 375a, 2. 3 Rot. Parl. 94a, 120b, 121a. 4 Rot. Parl. 12a, 2, 402b, 403. The responsibility of the moving cause took the form of forfeiture when it remained fresh, like the steam engine in *Regina v. Eastern Counties Ry.*, 10 M. & W. 58, and innumerable early instances, but it was not confined to such cases. 2 Black Book, (Twiss.) 279. But compare 1 Select Pleas in Adm., 6 Solil. Soc. Publ. lxxi, lxxii. The principle has continued until the present day. *The Mabel Adlad*, 2 How. 210, 234. *The Chine*, 7 Wall. 53.

The foregoing allusions seem to us enough to show that to entertain jurisdiction in this case is no innovation even upon the old English law. But a very little history is sufficient to justify the conclusion that the Constitution does not prohibit what conventions and usage demand.

In the case of *The Plymouth* there was nothing maritime in the nature of the tort for which the vessel was attached. The fact that the fire originated on a vessel gave no character to the result, and that circumstance is mentioned in the judgment of the court, and is contrasted with collision, although the consideration is not adduced as the sole ground for the decree. It has been given weight in other cases. *Campbell v. Hartfield & Co.*, 62 C. C. A. 278. *The Queen v. Judge of City of London Court*, [1892] 1 Q. B. 273, 294. Benedict, Admiralty, 3d ed. § 108. Moreover, the damage was done wholly upon the main land. It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases. *The Arkansas*, 17 Fed. Rep. 385, 387; *The F. & P. M. No. 2*, 30 Fed. Rep. 511, 515, and is indicated by the English books cited above. It is unnecessary to determine the relative weight of the different elements of distinction between *The Plymouth* and the case at bar. It is enough to say that we are not dealing with an injury to a government aid to navigation from ancient times subject to the admiralty, a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consum-

mated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering *The Plymouth* or any other authority binding on this court. As to the present English law, see *The Uhla*, L. R. 2 Ad. & Ec. 29, note; *The Swift*, [1901] p. 168.

Decree reversed.

Mr. Justice BROWN concurring.

I do not dissent from the conclusion of the court, although for forty years the broad language of Mr. Justice Nelson in the case of *The Plymouth*, (3 Wall. 20,) has been accepted by the profession and the admiralty courts as establishing the principle that the jurisdiction of the admiralty does not extend to injuries received by any structure affixed to the land, though such injuries were caused by a ship or other floating body. It received the approval of this court in the case of the *Phœnix Insurance Company*, (118 U. S. 610,) and in that of the *Chicago & Pacific Elevator Company*, (119 U. S. 388,) and has been followed by the courts of at least a dozen different districts, and applied to bridges, piers, derricks and every other class of structure permanently affixed to the soil.

I do not think this case can be distinguished from the prior ones, as, in my opinion, it makes no difference in principle whether a beacon be affixed to piles driven into the bottom of the river or to a stone projecting from the bottom, or whether it be surrounded by twelve feet or one foot of water, or whether the injury be done to a wharf projecting into a navigable water, or to a beacon standing there, or whether the damage be caused by a negligent fire or by bad steering.

I accept this case as practically overruling the former ones, and as recognizing the principle adopted by the English Admiralty Court Jurisdiction Act of 1861, (sec. 7,) extending the jurisdiction of the admiralty court to "any claim for damages by any ship." This has been held in many cases to include damage done to a structure affixed to the land. The distinction between damage done to fixed and to floating structures is a somewhat artificial one, and, in my view, founded upon no sound principle; and the fact that Congress, under the Constitution, cannot extend our admiralty jurisdiction, affords an argument for a broad interpretation commensurate with the needs of modern commerce. To attempt to draw the line of jurisdiction between different kinds of fixed structures, as, for instance, between beacons and wharves, would lead to great confusion and much further litigation.